

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO ENTER INTO AN AGREEMENT WITH WASTE MANAGEMENT INC., OF FLORIDA AUTHORIZING WASTE MANAGEMENT INC., OF FLORIDA TO INDEMNIFY AND HOLD HARMLESS THE TOWN FOR DAMAGES AND FEES INCURRED BY THE TOWN PURSUANT TO LITIGATION IN DEFENSE OF THE TOWN'S EXCLUSIVE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT INC., OF FLORIDA AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The Agreement between the Town of Davie and Waste Management, Inc. of Florida for indemnification and reimbursement sets forth that Waste Management will indemnify and hold harmless the Town from compensatory damages, attorney's fees and losses incurred by the Town as a result of the litigation brought by Southern Waste Systems, Inc. against the Town relevant to the Town Exclusive Franchise Agreement.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to approve.

ATTACHMENTS: Resolution, Indemnification and Reimbursement Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO ENTER INTO AN AGREEMENT WITH WASTE MANAGEMENT INC., OF FLORIDA AUTHORIZING WASTE MANAGEMENT INC., OF FLORIDA TO INDEMNIFY AND HOLD HARMLESS THE TOWN FOR DAMAGES AND FEES INCURRED BY THE TOWN PURSUANT TO LITIGATION IN DEFENSE OF THE TOWN'S EXCLUSIVE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT INC., OF FLORIDA AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie entered into an Exclusive Franchise Agreement with Waste Management Inc., of Florida for the collection of solid waste and recycle materials within the Town; and

WHEREAS, a third party has filed suit against the Town challenging the validity of the Town's Franchise Agreement regarding the franchising of construction and demolition debris; and WHEREAS, the Town and Waste Management, Inc. of Florida deem it mutually beneficial to have Waste Management, Inc. of Florida indemnify and hold harmless the Town for all expenses incurred as a result of the litigation as specifically set forth within the Indemnification and Reimbursement Agreement as set forth more specifically within Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby authorizes the Mayor to execute the Indemnification and Reimbursement Agreement between the Town of Davie and Waste Management, Inc. of Florida.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005

THIS INDEMNIFICATION AND REIMBURSEMENT AGREEMENT is made this _____ day of _____, 2005 by and between the TOWN OF DAVIE (the "Town") and WASTE MANAGEMENT, INC. OF FLORIDA ("WMIF").

W I T N E S S E T H:

WHEREAS, the Town and WMIF entered into a Franchise Agreement dated _____, to provide for the collection of solid waste and recycling materials within the Town; and

WHEREAS, the Town and WMIF are currently engaged in litigation brought by a third party against them regarding the franchising of construction and demolition debris; and

WHEREAS, as set forth herein, WMIF agrees to indemnify, hold harmless and defend the Town regarding the current litigation brought against the Town regarding the franchising of construction and demolition debris; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitations set forth above are incorporated herein.
2. WMIF and the Town are defendants in that certain lawsuit pending in federal court captioned Southern Waste Systems, LLC v. Town of Davie, Florida and Waste Management Inc. of Florida, Case No. 05-60847-CIV Dimitrouleas.
3. WMIF shall reimburse the Town for its costs for the payment of attorney fees and costs at the trial and appellate levels. It is recognized that the Town employs outside counsel (Monroe Kiar, Esq.) as the Town Attorney. WMIF shall reimburse the Town for fees paid to the Town Attorney at \$150.00 per hour incurred in providing assistance in this matter.
4. WMIF shall indemnify and hold harmless the Town and its officials against compensatory damages (but not punitive, special or incidental damages) and attorney fees and costs that may be awarded to the Plaintiff. WMIF shall not be required to pay any damages to the Town under the indemnification and hold harmless provisions.

5. WMIF and the Town shall cooperate in the defense of the aforesaid litigation including, but not limited to, providing testimony, documents, affidavits and other assistance to vigorously defend this matter through trial and appellate levels. Internal costs incurred by the Town for its employees and officials in rendering assistance shall be for the Town's account.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

ATTEST:

TOWN OF DAVIE, FLORIDA

City Clerk

By: _____
Mayor

Approved as to legal form
and sufficiency:

Town Attorney

WITNESSES:

WASTE MANAGEMENT, INC.
OF FLORIDA

By: _____

(Name printed or typed)

(Corporate Seal)

(Name printed or typed)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.

Signature of Person Taking Acknowledgment

Name Typed, Printed or Stamped